



State of Rhode Island and Providence Plantations
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Peter McWalters
Commissioner

December 22, 2008

TO: Superintendents of Schools
Special Education Administrators

FROM: Kenneth G. Swanson, Director
Office for Diverse Learners

RE: Advisory Concerning Changes in Federal Regulations:
Revocation of Parental Consent

Advisory Regarding Revocation of Parental Consent

In December of 2008, the Office of Special Education and Rehabilitative Services promulgated amendments to the regulations implementing the IDEA. This amendment includes provisions to allow for unilateral revocation of parental consent for special education services.

Parental consent for special education services can be revoked at any time.

Relevant language added to the federal regulations:

§ 300.9 Consent.

(c)(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

- This does not impinge on the parents rights to inspect records under § 300.613 or amend records under §300.618 through §300.621

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sexual orientation, race, religion, national origin, or disability.

§ 300.300 Parental consent.

New (b)(3) Now includes a consolidated version of the previous (b)(3) and (b)(4)

New (b)(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

- (i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;
- (ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
- (iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- (iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

- A parent's revocation must be in writing.
- Revocation applies to all special education services and cannot be used to refuse only a portion of services.
- Prior Written Notice must be provided to the parent before the public agency discontinues special education and related services to a child in accordance with § 300.503
- The LEA may not utilize mediation or due process hearing procedures (§§ 300.506 and 300.507) to override a parent's revocation of consent for the continued provision of services.
- Revocation of parental consent releases the LEA from the requirements of IDEA from the time the parent revokes consent for special education and related services (and after prior written notice requirements are met) until the time, if any, that the child is evaluated and deemed eligible, once again, for special education and related services.
- Nothing in § 300.300(b)(4) would prevent a general education teacher from providing a child whose parent has revoked consent for the continued provision of special education and related services with accommodations that are available to non-disabled children under relevant State standards.

- Once a parent revokes consent for special education and related services, the child is a general education student. Consequently, the child may be placed in any classroom where other general education students are placed.
- After revoking consent for his or her child, a parent always maintains the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services. An initial evaluation requires a review of existing evaluation data, on the basis of that review and input from the child's parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child. Therefore, a public agency may not always have to expend resources on a "new" initial evaluation.
- **Child find:** requirements are still required for all students, including those whose parent has revoked consent for the continued provision of special education and related services. The LEA retains the responsibilities required by § 300.111.
- **Discipline:** When a parent revokes consent for special education and related services, the parent has refused services as described in § 300.534(c)(1)(ii); therefore, the public agency is not deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and is not entitled to the IDEA discipline protections.
- **Reporting Requirements:** If a parent revokes consent after the school year begins but before administration of the annual State assessment required under the ESEA, the child is considered a general education student who has exited special education for accountability purposes. Section 200.20(f) if the Title I regulations allows States to include, for a period of up to two AYP determination cycles, the scores of students who were previously identified with a disability under the Act, but who no longer receive special education services, in the special education subgroup for purposes of calculating AYP (but not for reporting purposes). Therefore, the State may continue to include a child whose parent revokes consent for special education and related services in the special education subgroup for purposes of calculating AYP for two years following parental revocation of consent.

KGS:KN